

AMENDED IN ASSEMBLY MAY 9, 2011

AMENDED IN ASSEMBLY APRIL 26, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 1399**

---

**Introduced by Committee on Labor and Employment (Swanson  
(Chair), Alejo, Allen, Furutani, and Yamada)**

February 28, 2011

---

An act to amend Section 1198.5 of the Labor Code, relating to employment records.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1399, as amended, Committee on Labor and Employment. Employment records: right to inspect.

Under existing law, an employee has the right to inspect the personnel records that his or her employer maintains relating to the employee's performance or to any grievance concerning the employee.

This bill would require an employer to maintain personnel records for a specified period of time and to provide a current or former employee, or his or her representative, an opportunity to inspect and make copies of those records within a specified period of time, *except during the pendency of a lawsuit filed by the employee or former employer relating to a personnel matter*. In addition, in the event an employer violates these provisions, the bill would permit a current or former employee or the Labor Commissioner to recover a penalty of \$750 from the employer, and would further permit a current or former employee to obtain injunctive relief and attorney's fees.

Under existing law, an employer shall be guilty of a misdemeanor and is punishable by a fine, as specified, or imprisonment, as specified,

if he or she violates or refuses or neglects to comply with certain provisions, including the above provisions.

This bill would notwithstanding the above-described misdemeanor and fine and imprisonment provisions and would, instead, provide that a violation of the above provisions regarding personnel records constitutes an infraction. Although this bill would change a violation of the above-described provisions regarding personnel records from a misdemeanor to an infraction, by expanding the scope of what would constitute an infraction, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1198.5 of the Labor Code is amended to  
2     read:  
3     1198.5. (a) Every current and former employee, and his or her  
4     representative, has the right to inspect and receive copies of the  
5     personnel records that the employer maintains relating to the  
6     employee's performance or to any grievance concerning the  
7     employee.  
8     (b) The employer shall make the contents of those personnel  
9     records available for inspection to the current or former employee,  
10    or his or her representative, at reasonable intervals and at  
11    reasonable times, but not later than ~~21~~ 30 calendar days from the  
12    date of a written or oral request, as specified, for these records.  
13    Upon a written request from a current or former employee, or his  
14    or her representative, the employer shall also provide copies of  
15    the personnel records, at a charge not to exceed the actual cost of  
16    reproduction, not later than ~~21~~ 30 calendar days from the date of  
17    the request. Except as provided in paragraph (2) of subdivision  
18    (c), the employer is not required to make those personnel records  
19    or copies thereof available at a time when the employee is actually

1 required to render service to the employer, if the requester is the  
2 employee.

3 (c) The employer shall do the following:

4 (1) With regard to all employees, maintain a copy of each  
5 employee's personnel records for a period of not less than three  
6 years after termination of employment.

7 (2) With regard to current employees, make a current employee's  
8 personnel records available for inspection, or provide copies  
9 thereof, as requested by the employee or his or her representative,  
10 at the place where the employee reports to work, or at another  
11 location agreeable to the employer and the requester. If the  
12 employee is required to inspect or receive copies at a location other  
13 than the place where he or she reports to work, no loss of  
14 compensation to the employee is permitted.

15 (3) With regard to former employees, make a former employee's  
16 personnel records available for inspection, or provide copies  
17 thereof, as requested by the employee or his or her representative,  
18 at the location where the employer stores the records. A former  
19 employee may receive copies by mail if he or she reimburses the  
20 employer for actual postal expenses.

21 (d) The employer may take reasonable steps to verify the identity  
22 of a current or former employee or his or her authorized  
23 representative. For purposes of this section, "representative" means  
24 a person authorized in writing by the employee to inspect, or  
25 receive a copy of, his or her personnel records.

26 (e) The employer may designate the person to whom a request  
27 is made.

28 (f) Prior to making records specified in subdivision (a) available  
29 for inspection or providing copies of those records, the employer  
30 may redact the name of any nonsupervisory employee contained  
31 therein.

32 (g) The requirements of this section do not apply to:

33 (1) Records relating to the investigation of a possible criminal  
34 offense.

35 (2) Letters of reference.

36 (3) Ratings, reports, or records that were:

37 (A) Obtained prior to the employee's employment.

38 (B) Prepared by identifiable examination committee members.

39 (C) Obtained in connection with a promotional examination.

(4) Employees who are subject to the Public Safety Officers Procedural Bill of Rights (Chapter 9.7 (commencing with Section 3300) of Division 4 of Title 1 of the Government Code).

(5) Employees of agencies subject to the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

(h) If a public agency has established an independent employee relations board or commission, an employee shall first seek relief regarding any matter or dispute relating to this section from that board or commission before pursuing any available judicial remedy.

(i) In enacting this section, it is the intent of the Legislature to establish minimum standards for the inspection and the receipt of copies of personnel records by employees. Nothing in this section shall be construed to prevent the establishment of additional rules for the inspection and the receipt of copies of personnel records that are established as the result of agreements between an employer and a recognized employee organization.

(j) If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.

(k) A current or former employee may also bring an action for injunctive relief to obtain compliance with this section, and may recover costs and reasonable attorney's fees in such an action.

(l) Notwithstanding Section 1199, a violation of this section is an infraction. Impossibility of performance, not caused by or resulting from a violation of law, may be asserted as an affirmative defense by an employer in any action alleging a violation of this section.

*(m) If an employee or former employee files a lawsuit that relates to a personnel matter against his or her employer or former employer, the right of the employee, former employee or his or her representative to inspect or copy personnel records under this section ceases during the pendency of the lawsuit in the court with original jurisdiction.*

*(n) For purposes of this section, a lawsuit "relates to a personnel matter" if a current or former employee's personnel records are relevant to the lawsuit.*

1     SEC. 2. No reimbursement is required by this act pursuant to  
2     Section 6 of Article XIII B of the California Constitution because  
3     the only costs that may be incurred by a local agency or school  
4     district will be incurred because this act creates a new crime or  
5     infraction, eliminates a crime or infraction, or changes the penalty  
6     for a crime or infraction, within the meaning of Section 17556 of  
7     the Government Code, or changes the definition of a crime within  
8     the meaning of Section 6 of Article XIII B of the California  
9     Constitution.

O